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PayDay

The U.S. Department of Labor (DOL) regulates an employer's payment of 401K, 403b and SIMPLE-IRA retirement plan employee "elective deferrals" to the plan's investment custodian.

DO YOU KNOW THE DEADLINE FOR TRANSMITTING RETIREMENT PLAN FUNDS?

401K AND 403b RETIREMENT PLANS

The DOL rule is somewhat gray. It states that:

"An employer is required to deposit your money into your retirement account as soon as the employee assets can be reasonably segregated from employer assets, but no later than 15 business days of the month following the month in which the payroll deduction occurred."

Based on fact patterns in DOL plan audits and other published commentary, some considerations are as follows:

- For plans with fewer than 100 participants, the DOL issued proposed regulations on February 29, 2008 which established a "safe harbor" of 7 business days following the payroll deduction date. Depositing employee 401K and 403b payroll deduction funds will be considered timely if this "safe harbor" test is

met.

- No safe harbor time period exists for plans with 100 or more employee-participants. Commentary does exist that suggests funding the retirement plan by the due date of an employer's Form 941 tax deposit will be considered timely (which for large employers is the next day after payroll).

PRACTICAL CONCLUSIONS

- For employers with fewer than 100 plan participants consider using the "7 business day" safe harbor to ensure compliance with DOL funding requirements.
- For larger employers, consider paying the employee payroll deductions ("elective deferrals") no later than your Form 941 payroll tax due date.

SIMPLE-IRA PLANS - DEPOSIT RULE IS SIMPLE!

The DOL requires that employee payroll deductions for an employer's SIMPLE-IRA retirement plan must be remitted by the 30th day following the month in which the "elective deferrals" were withheld from payroll.

WHAT ABOUT EMPLOYER FUNDING?

Employers are not required to transmit employer "matches" and discretionary employer contributions until the due date of the employer's Federal income tax return, including filing extensions. Many employers do choose to transfer matching plan contributions on a more frequent basis to avoid large annual plan payment amounts.

ACCUPAY CAN HELP

We help many of our clients meet their retirement plan funding obligations. Our assistance includes

custom reports which detail the amounts of employee "elective deferrals", as well as cutting checks or creating electronic files to assist with the employer's payment of retirement plan funds. **Call one of AccuPay's "CPP/CPA service teams" at 885-7600 with any questions as to how we can help you meet your retirement plan objectives.**

Thank you to Dave Berhmann of American Pension Advisors (www.apapensions.com) for providing us with information about plan funding due dates.

PayDay is an email communication of payroll news, legal updates and tax considerations intended to inform clients and colleagues of AccuPay about current payroll issues and planning techniques. You should consult with your CPA or tax advisor before implementing any ideas, comments or planning techniques.

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